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IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL REVISION APPLICATION No 195 of 1983

For Approval and Signature:

Hon'ble MR.JUSTICE S.D.PANDIT

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1. Whether Reporters of Local Papers may be allowed to see the judgements? Yes
2. To be referred to the Reporter or not? No.

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3. Whether Their Lordships wish to see the fair copy of the judgement? No.
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? No.
5. Whether it is to be circulated to the Civil Judge? No.

KALIDAS MANGALDAS PATEL

Versus

SHRI K.G.BILKHIWAL

Appearance:

MR Hasim Quresh for Mr. RC JANI for Petitioner
Mr. Sunil Patel for Respondent No. 1
Mr. S.R.Divetia APP for Respondent No. 2

CORAM : MR.JUSTICE S.D.PANDIT

Date of decision: 28/04/97

ORAL JUDGEMENT

The original accused in cri. case no. 157/81 on

the file of the learned Metropolitan Magistrate Court, Ahmedabad has come in revision before this Court against the order passed by the learned Addl. City Sessions Judge, Ahmedabad in revision application no.255/82.

2. The respondent no.1 K.G. Bilkhiwal has lodged a cri. complaint no. 157/81 in the court of the learned Metropolitan Magistrate, Ahmedabad under section 9 of the Central Excise and Salt Act 1944(hereinafter referred to as the said Act) by alleging that during the period running between 1.3.74 and 20.2.76 the revision applicant had illegally and improperly availed of exemption from Central Excises under Notification No. 116/74 dt. 27.7.74 and that the revision applicant was guilty of the offence punishable under section 9 of the said Act as well as under section 121 IPC.

3. The complainant had examined himself before the learned Magistrate and he had also produced documentary evidence consisting of various books of accounts and bills seized from the custody of the present revision applicant as well as the statement recorded in writing and under the signature of the revision applicant before the Central Excise Officer. The learned Metropolitan Magistrate came to the conclusion that those documents produced by the complainant during his deposition were not proved and therefore, they could not be considered and he also found that the entries in the respect of the goods were during the period between 1.3.74 and 28.2.77 and the same were exceeding a period of one year as well as there were more than 3 entries and therefore, he came to the conclusion that no charge could be framed against the present revision applicant and he therefore discharged the present revision applicant.

4. Being aggrieved by the said discharge the respondent no.1 preferred cri.revision application no. 255/82 before the learned City Sessions Judge, Ahmedabad and the said revision was heard by the Addl.City Sessions Judge who observed that the learned Metropolitan Magistrate has not taken into consideration the provisions of Section 36A the said Act under which the documents produced could be taken into consideration as evidence and learned Metropolitan Magistrate also did not take into consideration the provisions to sections 219 and 220 of the Cr.P.C.. and therefore, the learned Magistrate has erred in discharging present revision applicant. He therefore, allowed the said revision application and remanded the matter to the learned Metropolitan Magistrate by directing him to frame charge as required by law.

5. Being aggrieved by the said decision the original accused has come in revision before this court. From the materials on record it seems that as the complainant in his complaint has not given any detail as to how the offence alleged against the present revision applicant has been committed by him and even during his examination in chief the complainant has not given details of the actions or acts of the present revision applicant the learned Metropolitan Magistrate has found it difficult to take out necessary materials for framing charge against the present revision applicant. Respondent no.1 complainant has primarily relied upon the documents produced by him during his evidence and the case of the complainant is based on the documentary evidence than on the oral evidence. Therefore, in the circumstances the learned Metropolitan Magistrate ought to have read the documents produced by the complainant carefully in order to find out as to whether from the said documents offence alleged against the present revision applicant is disclosed or not. Merely because the complainant does not depose about the details of the offence committed by the applicant and even if no details are given in the complaint lodged by the complainant, the learned Metropolitan Magistrate was not justified in discharging the present accused without considering the documents produced by the complainant in support of his accusation against the present revision applicant.

6. No doubt the period alleged by the complainant against the present revision applicant is exceeding the period of one year but merely because the period is exceeding one year, the learned Magistrate was not justified in discharging the accused. If the learned Magistrate had found that it was open for him to try the offence for a period within one year, he ought to have framed a charge or he should have directed the complainant to file a separate complaint or split the complaint and ought to have framed separate charges. But merely because the complainant has quoted in his complaint an offence exceeding the period of one year the learned Magistrate was not justified in rejecting the claim of the complainant by discharging the present revision applicant. The learned Magistrate has not taken into consideration the documents produced by the complainant and therefore has come to a wrong conclusion that the prosecution has failed to make out a case for framing of charge. The offence alleged against the revision applicant are based on the documents. Therefore, it would just and proper that the learned advocate for the complainant Mr. Sunil Patel who is

present before me should give a draft charge before the learned Magistrate and after such draft charge is filed by the complainant, the learned Magistrate should give opportunity to both the complainant as well as the accused of being heard and after hearing them if he finds that there is a case for framing charge, he should frame the charge and in case , after hearing both the sides, he is of the opinion that no charge is disclosed, he should give a speaking order as to why he has come to the said conclusion. The original order passed by him is very cryptic and in the circumstances the directions given by the learned Addl.City Sessions iJudge directing both the sides to appear before the learned Magistrate for the purpose of consideration of charge against the present revision applicant need not be interfered with in this revision application. The order passed by the learned Addl. City Sessions Judge is quite proper and correct in view of the materials on record. As indicated above the learned advocate for the complainant should give the draft charge before the learned Magistrate and thereafter the learned Magistrate should given an opportunity of being heard to both the sides and then should pass appropriate order in case if he comes to the conclusion that the accused is to be discharged and proceed to hear the case in accordance with law as expeditiously as possible. In the circumstances I direct that both the parties should appear before the learned Magistrate on 22.5.97. Hence the present application deserves to be dismissed and the same is accordingly dismissed. Rule discharged.

(S.D.Pandit.J)